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June 24, 2003

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JOE P. LENISKI, JR.

*ALSO ADMITTED IN GA

Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Pkwy.
Nashville, TN 37243-0505

Via Hand Delivery

Attention: Sharla Dillon

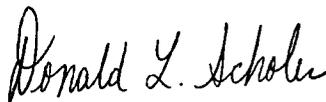
Re: Petition of On-Site Systems, Inc. To Amend Its Certificate of Convenience and Necessity
Docket No. 03-00329

Petition of Tennessee Wastewater Systems, Inc. To Amend Its Certificate of Convenience and Necessity
Docket No. 04-00045

Dear Chairman Tate:

I have enclosed for filing the original and fourteen copies of the Reply of Tennessee Wastewater Systems, Inc. to Memorandum of Law and Response of East Sevier County Utility District to Motion to Dismiss in this consolidated matter. Please return the extra copy of the Reply to me stamped filed. Thank you for your assistance in this matter.

Sincerely yours,



DONALD L. SCHOLES

Enclosures

c: Charles Pickney, Jr.
Mark Jendrek
Charles B. Welch, Jr.
G. Scott Thomas

BKSJ File No. 04-189

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF ON-SITE SYSTEMS, INC. TO)	Docket No. 03-00329
AMEND ITS CERTIFICATE OF)	
CONVENIENCE AND NECESSITY)	
)	
and)	
)	
)	
PETITION OF TENNESSEE WASTEWATER)	Docket No. 04-00045
SYSTEMS, INC. TO AMEND ITS)	
CERTIFICATE OF CONVENIENCE)	
AND NECESSITY)	

**REPLY OF TENNESSEE WASTEWATER SYSTEMS, INC. TO MEMORANDUM OF
LAW AND RESPONSE OF EAST SEVIER COUNTY UTILITY DISTRICT TO
MOTION TO DISMISS**

In its Memorandum of Law and Response, East Sevier County Utility District (the District) cites no statute or order of the Sevier County Mayor which gives it the authority to provide sewer service. No such authority exists. The Tennessee legislature made it very clear that the order creating a utility district after July 1, 1967, shall state "the service or services which the district shall be authorized to furnish." This statutory directive is mandatory not permissive and goes to the very purpose for which a utility district is created.

The defective creation of the District cannot be corrected by an implied recognition of the District by courts or administrative agencies. The issue of whether the District was validly created

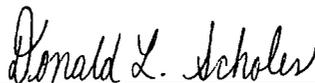
was not an issue in the cases cited by the District in its Memorandum of Law and Response. The defective incorporation of the District can only be corrected by an act of the Tennessee legislature or its re-creation by the County Mayor of Sevier County in strict conformance with the requirements of T.C.A. § 7-82-201 and 202. The Company's position is supported by Opinion No. 80-51 of the Tennessee Attorney General which is attached. In this opinion the Tennessee Attorney General concluded that the Milan Special School District was not a legal entity because the governing body of the City of Milan never activated the District as required by the Milan Special School District's enabling legislation. The Attorney General found that the City of Milan had the authority to operate a school system within its boundaries because the legislature had granted to all cities the power to operate a school system. The Attorney General concluded that the City of Milan had no authority to operate a school system outside of its municipal boundaries which was within the purported geographic jurisdiction of the Milan Special School District because the Milan Special School District was not validly created.

The Company agrees that this Authority does not have the jurisdiction to determine whether the District is validly created and should continue in existence. This Authority does have jurisdiction to determine whether the interests of the District should be considered in this proceeding. If the District is not authorized to provide sewer service, it has no interest in this proceeding. For the purpose of determining whether the present and future public convenience and necessity requires the issuance of the certificates in this proceeding, the Authority must decide whether the District can legally provide sewer service within the areas sought to be served. If the District is not legally able to provide sewer service and the Authority acts in this matter based upon the assumption it can, potential customers which the Company can serve may be precluded from

obtaining sewer service in a timely fashion. Therefore, the District's intervention in this case should be dismissed.

Dated this 24th day of June, 2004.

Respectfully submitted,



DONALD L. SCHOLES, # 10102
Branstetter, Kilgore, Stranch & Jennings
227 Second Avenue North, 4th Floor
Nashville, Tennessee 37201-1631
(615) 254-8801
Attorney for Tennessee Wastewater Systems, Inc.

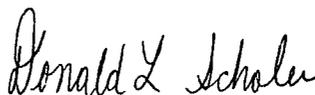
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing Memorandum has been served upon the following persons on this 24th day of June, 2004 by U.S. Mail, postage prepaid:

Mark Jendrek
Mark Jendrek P.C.
Post Office Box 549
Knoxville, TN 37901

Charles B. Welch, Jr.
Farris, Matthews, Branan, Bobango & Hellen, PLC
618 Church Street, Suite 300
Nashville, TN 37219

G. Scott Thomas
Bass, Berry & Sims, PLC
AmSouth Center
315 Deaderick Street, Suite 2700
Nashville, TN 37238



DONALD L. SCHOLES

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TENNESSEE

80-51

1980 Tenn AG LEXIS 557

January 30, 1980

REQUESTBY:

[*1]

WILLIAM M LEECH, JR , Attorney General (C HAYES COONEY, Chief Deputy Attorney General, R STEPHEN DOUGHTY, Assistant Attorney General)

OPINION:

Honorable Ray Davis
Tennessee State Representative
209 War Memorial Building
Nashville, Tennessee 37219

By letter of January 3, 1980, you have requested opinions of this office on the following questions

QUESTION 1

Is the Milan Special School District, created by Chapter 504 of the Private Acts of 1945, a legal entity?

OPINION

The Milan Special School District, created by Chapter 504 of the Private Acts of 1945, is not a legal entity since the governing body of the City of Milan has never activated the district

ANALYSIS

Chapter No 504 of the Private Acts of 1945, provides in pertinent part

"Section 1 Be it enacted by the General Assembly of the State of Tennessee, that the governing body of the City of Milan, Gibson County, Tennessee, is hereby authorized to create a Special School District within the corporate limits of said City, "

You state in your letter that no steps were ever undertaken to activate the special school district Chapter No 504 is an enabling act and until such time as the governing body of [*2] the City of Milan does authorize creation of the special school district there is no entity by the name of Milan Special School District Should the governing body of the City of Milan decide now to authorize creation of the special school district there is some question as to whether such district could validly be authorized In an opinion of this office dated April 5, 1979, to Representative James H, Wallace, concerning public schools in Maury County, it was opined as follows

"This Act did not purport to abolish the Maury City School System, nor could it have under the prevailing view that a private act cannot abolish a special school district since such an act would conflict with the general school law of the state See *Melvin v Bradford Special School Dist*, 186 Tenn 694, 212 S W 2d 668 (1948). The applicable general statutes permit the abolition of a school district, provided that withstanding financial obligations have been discharged, (T.C A § 49-402), or a municipal school system may transfer the administration of the school system to the county board of education (T.C A § 49-404), however, in the case of either abolition or transfer of administration, [*3] a referendum must be held in the school district, and a majority of the voters must approve the action "

Although Section 2 of the Act does vest the Board of Education of the City of Milan with authority to manage and control the schools in the special school district, chapter No 504 likewise does not purport to abolish the Milan City Schools

QUESTION II

Has the status of the Milan Special School District been affected by implication, or otherwise, by the Private Acts of 1957, or of 1967, neither of which took affect for failure of local ratification?

OPINION

Since this office is of the opinion that the Milan Special School District is not a legal entity, it was unaffected by the two later noneffective private acts

ANALYSIS

Neither Chapter No. 372 of the Private Acts of 1957, nor Chapter No 400 of the Private Acts of 1967, were effective because they failed to received appropriate local ratification. These two acts both provided for the creation of a Milan Special School District. Since the acts were not approved and since the 1945 private act was never acted upon, the two later acts had no effect upon the status of the Milan Special School District. [*4]

QUESTION

Is the Gibson County School Board preempted from exercising jurisdiction within the area of the Milan Special School District?

OPINION

Until such time as Chapter No 504 of the Private Acts of 1945 is implemented by the City of Milan and the voters of the Thirteenth Civil District of Gibson County approve the inclusion of that District in the special school district, the Gibson County School Board has authority for operation of the schools in the Thirteenth Civil District and the Milan City School Board has authority for operation of schools within the corporate limits of the City of Milan

ANALYSIS

Since Chapter No 504 of the Private Acts has never been implemented the operation of the schools within the corporate limits of the City of Milan is within the authority of the Milan City Schools. Chapter No 458 of the Private Acts of 1901 constitutes the charter of incorporation for the City of Milan and among the powers enumerated therein are those concerning schools. Furthermore, pursuant to T C A § 49-301 et seq., incorporated municipalities possess general authority to establish a city school system. The information provided this office [*5] indicates the Milan City Schools to be currently an operating entity.

With respect to the Thirteenth Civil District, which lies outside the corporate limits of the City of Milan, it is apparent that the Gibson County School Board would have jurisdiction. Should the Milan Special School District ever be activated by the City of Milan pursuant to Chapter No 504 of the Private Acts of 1945 it would still be necessary, pursuant to Section 1 of the Act, for the voters of the Thirteenth Civil District to approve the inclusion of the District within the special school district. Until that time the Gibson County School Board would continue to have jurisdiction.